1200 19th Street NW
Suite 500
Washington, DC 20036
ww.z-tel.com

January, 31, 2003

Ex Parte Presentation
Via Electronic Transmission

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: UNE Triennial Review, CC Docket No. 01-338
Local Competition Rules, CC Docket No. 96-98
Deployment of Advanced Wireline Services, CC Docket No. 98-147

Dear Ms. Dortch,

In their misguided zeal to show that UNE-L entry can work for analog dialtone services, the Bell operating companies keep digging themselves into an ever-deeper hole. Yesterday, BellSouth admitted – as SBC had done on January 14 – that a CLEC offering competitive analog dialtone service *via* UNE-L would face significant and sustained cost disparities that the *USTA* court would regard as "necessarily" resulting in impairment.[1]

In a January 30, 2003 *ex parte*,[2] BellSouth provided an analysis similar to SBC's UNE-L Cost Model, confirming that the results Z-Tel presented in our Jan. 29, 2003 *ex parte* hold true throughout BellSouth's 9-state region.[3] BellSouth's analysis shows that in the BellSouth region, a CLEC using UNE-L to serve analog dialtone customers at substantial scale, with a fully-loaded switch and optimized transport network, would likely have per-line monthly switching costs ranging from $14 to $18 per month on average, which is

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1 *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 426 (D.C. Cir. 2002).

2 Letter from Glenn T. Reynolds, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, and 98-147 (Jan. 30, 2003).

3 Letter from Christopher J. Wright, Harris, Wiltshire & Grannis, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, and 98-147 (Jan. 29, 2003).

comparable to the $18.48 monthly switching costs contained in the SBC UNE-L model. Significantly, even in the "best case" scenario imagined by BellSouth, the hypothetical, efficient UNE-L CLEC would have monthly switching costs of $10 to $11 per line, which still represents an **80-90%** increase over switching costs using unbundled switching. **Both** of BellSouth's cases therefore demonstrate similar significant, substantial, and sustained cost disparities between a hypothetically (and unrealistically) efficient UNE-L CLEC and a CLEC competing for analog dialtone customers via UNE-P. The reduction in CLEC ouput shown by Z-Tel in our analysis of SBC's model – reductions based on unrebutted econometric estimates of CLEC output responses to cost changes – would also hold true in BellSouth's calculations.

Moreover, BellSouth's submission also reconfirms Z-Tel's showing in our Jan. 29 *ex parte* that local switching and transport networks exhibit natural monopoly characteristics sufficient to require unbundling. In the BellSouth region, a UNE-L CLEC with scale, a fully-loaded switch, and optimized transport network would still face average total costs much higher than the ILEC's – whose network was, of course, designed to serve the entire market. This indicates that the costs of serving analog customers declines over the entire market. As described in Z-Tel's Jan. 29 *ex parte*, that fact mandates that the FCC order the unbundling of local switching and transport networks to serve analog dialtone consumers even under the most restrictive reading of *USTA*.

In their advocacy on this issue, the Bell companies continue to focus mistakenly on the "margin" between retail prices and UNE-L costs. That focus is incorrect under *USTA*, which observed that "impairment" is "necessarily . . . traceable to some kind of disparity in cost,"[4] – meaning, of course, a disparity between the costs of ILECs and CLECs. The Commission cannot comply with *USTA* without considering these cost disparities. Merely comparing CLEC costs to average retail rates for the most intense users of telecommunications services ignores the consequences of CLEC/ILEC cost disparities on the competitive dynamic and paints an incomplete picture of local competition. Of course, perhaps an incomplete picture is what the Bells desire to present.

Sincerely,

s/Thomas M. Koutsky
Vice President, Law and Public Policy
Z-Tel Communications, Inc.
1200 19th Street, N.W., Suite 500
Washington, DC 20036
(202) 955-9652

cc: William Maher
Jeffery Carlisle
Scott Bergmann

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[4] *USTA*, 290 F.3d at 426.